Virginia Regulatory Town Hall

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Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-30, 30-40 , 30-60, 30-80, and 30-110
Regulation title	Groups Covered and Agencies Responsible for Eligibility Determinations; Eligibility Conditions and Requirements; Standards Established and Methods Used to Assure High Quality Care and Methods and Standards for Establishing Payment Rates; Other Types of Care and Eligibility and Appeals
Action title	"Medicaid Works" a Medicaid Buy-In Program
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 *Acts of Assembly*, Chapter 3 Item 302 X. This new program, called "Medicaid Works," requires the amendment of several subsections of the DMAS regulations in the areas of Medicaid eligibility, new alternative benefit services, and provider reimbursement. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees, who desire to be employed, to have added income that will not count against their eligibility income limits. Presently, Medicaid enrollees who have disabilities, but who still have the capacity to be gainfully employed, could lose their Medicaid eligibility due to excess income if they are employed. This change reduces the financial restrictions to which such enrollees may be subject. No changes were made between the publication of the proposed stage regulation and the publication of the final stage regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages concerning Groups Covered and Agencies Responsible for Eligibility Determinations (12 VAC 30-30); Eligibility Conditions and Requirements (12 VAC 30-40); Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60), and; Methods and Standards for Establishing Payment Rates (12 VAC 30-80); Other Types of Care and Eligibility and Appeals (12 VAC 30-110) entitled "Medicaid Works" a Medicaid Buy-In Program and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

_____ _____

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The 2006 *Acts of Assembly*, Chapter 3, Item 302 X directed this regulatory action to amend the State Plan for Medical Assistance to implement a Medicaid Buy-In Program designed to include cost sharing provisions. At the time of enrollment in the program, the individual must either be a current Medicaid recipient or meet the income, asset and eligibility requirements for the Medicaid-covered group for individuals who are blind or disabled and have incomes that do not exceed 80 percent of the Federal Poverty Income guidelines.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Appropriation Act. This new program, called "Medicaid Works," requires the amendment of two regulations addressing Medicaid eligibility. One of the issues faced by Medicaid enrollees with disabilities is that, while many of them have the capacity to be gainfully employed, the extra income they earn could cause them to lose their Medicaid eligibility due to excess income. The Medicaid Works Buy-In program will help protect the health and welfare of these citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees, who desire to be employed, to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject. This Medicaid Buy-In option provides work incentives that encourage people with disabilities to work or increase their level of work and continue to receive their Medicaid benefits for the very necessary medical care that such disabled persons require.

In addition to standard Medicaid services, this proposed regulation also adds Personal Assistance Services (PAS) for those enrollees for who would otherwise qualify for PAS if they were in a DMAS waiver program.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The Medicaid State Plan sections affected by this regulatory action are Groups Covered and Agencies Responsible for Eligibility Determinations (12 VAC 30-30) and Eligibility Conditions and Requirements (12 VAC 30-40). New to this regulatory action with this proposed regulation stage, the Agency is adding subsections in Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60) and Methods and Standards for Establishing Payment Rates; Other Types of Care (12 VAC 30-80). The state regulations being created by this action are Working Individuals with Disabilities (12 VAC 30-110-1500 et seq.).

Medicaid eligibility is based upon both income and resource limits. Currently, federal Medicaid eligibility rules do not allow disabled persons to earn a significant amount of income because the extra income they could earn, as well as savings accounts funded from earned income, may cause them to lose their Medicaid eligibility. For purposes of continuing Medicaid eligibility, income that is not spent within the month it is earned is counted as a financial resource. Any money placed in IRS-sanctioned retirement accounts, medical savings or reimbursement

accounts, independence accounts or education accounts are counted towards an individual's Medicaid financial resource limit.

This action is intended to complete the implementation of the new Medicaid Buy-In program, called *Medicaid Works*, required by the 2006 Virginia *Acts of Assembly*, Chapter 3, Item 302 X. *Medicaid Works* is a work incentive initiative requiring the amendment of the Medicaid State Plan regarding eligibility. This innovative program, permitted under section 1902(r) (2) of the *Social Security Act*, is designed to create greater flexibility in establishing Medicaid eligibility for working disabled individuals. The individuals who will be eligible for this program do not comprise a new eligibility group but are within the existing categories for the Aged, Blind, and Disabled Persons having incomes at 80% of the Federal Poverty Income Level. Because one purpose of the program is to provide incentives for disabled Medicaid recipients to become employed, Medicaid will disregard earned income placed in specialized accounts that enables eligible enrollees to have income above the 80% federal level.

The *Medicaid Works* Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating a work incentive for certain Medicaid enrollees with disabilities, if they desire to be employed, to have added income or resources that will not count against their Medicaid eligibility limits. This reduces the financial restrictions to which these enrollees may be subject, and encourages greater responsibility and self-determination in eligible enrollees.

In addition to the eligibility disregard for earned income, the *Medicaid Works* Buy-In program incorporates greater financial resource disregards as well. Once an individual is enrolled in the *Medicaid Works* program, their earned income limits are higher, and any income placed in the approved savings accounts described below are disregarded for eligibility purposes. Disabled persons who participate in *Medicaid Works* will be allowed to have earned income amounts up to 200% of the Federal Poverty Income level. In addition, the *Medicaid Works* program adds the Work Incentive Account, in which enrollees may place a limited earned income amount, which will also be disregarded. Income placed in such accounts may be used for any purposes.

To enroll in *MEDICAID WORKS*, applicants must first establish a Work Incentive (WIN) account at a bank or other financial institution. One or more WIN accounts must be designated by enrollees and used to deposit all earned income and to keep all resources, or savings, above the SSI resource limit in order to remain eligible for this Medicaid program. By placing the earned income in the WIN account, enrollees in can have annual earnings as high as 200% of the Federal Poverty Income level and keep resources in the account of up to the annual SSI threshold for 1619(b) enrollees. Amounts deposited in the following types of IRS-approved accounts, which are also designated as WIN accounts, will not count against this resource limit and will not affect eligibility for the program. These include retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts.

If an enrollee leaves the *Medicaid Works* program, any income remaining in the Work Incentive Account is disregarded for up to a year following his withdrawal from *Medicaid Works*. Any income placed in the other IRS-approved accounts described above will continue to be disregarded as long as such individuals remain in the general Medicaid program.

The new changes in this second proposed regulation clarify that once an individual enrolls in the *Medicaid Works* program, he or she has access to all regular Medicaid services, including services associated with Early and Periodic Screening, Diagnosis and Treatment (EPSDT), under normal procedures, for those under the age of 21. Currently, Personal Assistant Services (PAS) are only available to individuals enrolled in DMAS Home and Community-Based Care Waiver programs. Under the changes in this new proposed regulation, however, enrollees in Buy-In now have access to PAS if they would qualify for such services in a Waiver.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.
If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of the proposed regulations to the public is to encourage and enable individuals with disabilities to become employed, which may reduce the level or amount of public benefits that the individual would otherwise consume. These workers with disabilities will also become taxpayers and not just consumers of public resources. Potential program participants must meet the eligibility requirements for the existing Blind and Disabled covered groups (having incomes of less than or equal to 80% of Federal Poverty Income guidelines) so the new Medicaid Buy-In (MBI) program, *Medicaid Works*, will not add new covered lives and medical expenses to burden the Commonwealth. The regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes were made between the publication of the proposed stage regulation and the publication of the final stage regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMAS' proposed regulations were published in the November 10, 2008, *Virginia Register* (VR 25:5) for their public comment period from November 10, 2008, through January 9, 2009. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Which VAC section does this refer to??		Residents of long-term care (LTC) institutions and home and community-based services waivers cannot be enrolled in Medicaid Buy-In program, MEDICAID WORKS.	Delete this item from regulations, as this restriction is unnecessary and would not allow LTC and waiver enrollees to participate in the program.
12 VAC 30-30-20			Adds reference to these eligible persons.
	12 VAC 30-40-105		Adds new section for eligibility criteria for individuals with disabilities under the Ticket to Work and Work Incentive Improvement Act.
12VAC 30-40-280			This regulation amends the more liberal income disregards to permit working individuals to earn up to 200% of the Federal Poverty level.
12 VAC 30-40-290			This regulation amends the more liberal methods of treating resources under §1902 (r) (2) of the Act. that includes the provisions for establishing Work Incentive (WIN) Accounts.
	12 VAC 30-60-200		Adds new section describing in detail the provision of services available to Buy-In enrollees, including PAS.
12 VAC 30-80-30		Reimbursement for other Fee-for-service providers.	Adds description of reimbursement for PAS.
	12 VAC 30-110-1500 et seq.		Adds new section which establishes state regulations containing greater details than were submitted to CMS for this program.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or

simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods to accomplish the objectives of the legislation. DMAS did attempt an alternate approach to address the legislative intent that was denied by CMS. There will be no adverse impact on small business as a result of this regulatory action, as there is no compliance or reporting requirements for businesses that employ program participants. Small business may, in fact, benefit from this action as it may increase the size of the labor pool, especially with individuals willing to work part-time and with individuals who do not need employer-subsidized health coverage.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; it does encourage greater economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.